



(PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from (Specify District)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge Judgment
		<input checked="" type="checkbox"/> a. all parties represented				
		<input type="checkbox"/> b. At least one party is pro se.				

(PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. PLAINTIFF	<input type="checkbox"/> 2 U.S. DEFENDANT	<input type="checkbox"/> 3 FEDERAL QUESTION	<input checked="" type="checkbox"/> 4 DIVERSITY (U.S. NOT A PARTY)
-------------------------------------------	-------------------------------------------	---------------------------------------------	-----------------------------------------------------------------------

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Diego B. Fernandez  
 1594 Route 9W  
 Highland Falls, NY 10928  
 County of Orange

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Philadelphia Indemnity Insurance Company  
 One Bala Plaza, Suite 100  
 Bala Cynwyd, PA 19004

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN  
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE Apr. 5, 2016 SIGNATURE OF ATTORNEY OF RECORD

*Christopher T. Bradley*  
 RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
 YES (DATE ADMITTED Mo. 03 Yr. 92)  
 Attorney Bar Code #CB4725

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

DIEGO B. FERNANDEZ,

Plaintiff,

**NOTICE OF REMOVAL**

- against -

PHILADELPHIA INDEMNITY INSURANCE  
COMPANY,

Defendant.

-----X

Defendant, PHILADELPHIA INDEMNITY INSURANCE COMPANY (“PIIC”), hereby files this Notice of Removal of the above-described action, removed from the Supreme Court of the State of New York, Orange County, Index Number EF001171-2016, and all claims and causes of action therein, to the United States District Court for the Southern District of New York, as provided by Title 28, U.S. Code, Section 1446 *et. seq.*, and Rule 11. The removing Defendant applies for the purposes of removal only and for no other purposes and reserves all rights, claims and defenses of any nature whatsoever, including but not limited to defenses related to service of process, jurisdiction and venue, and state as follows:

1. PIIC is the only named defendant in the above-entitled action.
2. At all times relevant, PIIC is organized and exists under the laws of, and has its principal place of business in the Commonwealth of Pennsylvania.
3. At all times relevant, Plaintiff DIEGO B. FERNANDEZ was and still is an individual having his residence and domicile in the State of New York, County of Orange.
4. On or about February 22, 2016, plaintiff filed the instant action against PIIC in the Supreme Court of the State of New York, Bronx County, Index No. EF001171-2016, and it is

now pending in that Court. A copy of the Summons and Complaint is annexed hereto as Exhibit A.

5. In the action, Plaintiff seeks monetary damages in the amount of \$164,900, representing PIIC's alleged contractual obligation to Plaintiff under a Policy of Insurance No. GD20063864-004, plus interests, costs, and disbursements.

6. The Summons and Complaint was served on PIIC on or about March 18, 2015.

7. PIIC has not yet interposed an Answer to the action for money damages.

8. The United States District Court for the Southern District of New York has jurisdiction by reason of the diversity of citizenship of the parties pursuant to 28 U.S.C.A. §1332.

9. Plaintiff is now, and was at the time the state action was commenced, an individual having his residence and domicile in the State of New York, County of Orange.

10. PIIC is now, and at the time the state action was commenced, a citizen of the Commonwealth of Pennsylvania.

11. No change of citizenship of parties has occurred since the commencement of this action.

12. This is an insurance coverage action.

13. The matter in controversy exceeds, exclusive of costs and disbursements, the sum or value of \$75,000.00.

14. PIIC is not a citizen of the state in which the action was brought.

15. A copy of all process and pleadings served upon PIIC are annexed as Exhibits A and B.

16. PIIC expressly reserves the right to raise all defenses and objections to the state court action after its removal to the United States District Court for the Southern District of New York.

17. PIIC will give written notice of the filing of this notice as required by 28 U.S.C.A. §1446(d).

18. PIIC will file a copy of this notice with the clerk of the New York State Supreme Court, Orange County, as required by 28 U.S.C.A. §1446(d).

For all the above stated reasons, PIIC requests that the Court grant the relief requested herein.

Dated:           New York, New York  
                 April 5, 2016

Respectfully Submitted,

By:

  
Christopher T. Bradley (CB4725)  
MARSHALL CONWAY & BRADLEY, P.C.  
Attorneys for Defendant  
PHILADELPHIA INDEMNITY INSURANCE  
COMPANY  
45 Broadway, Suite 740  
New York, New York 10006  
(212) 619-4444  
File No.: 36-8931

TO: George J. Calcagnini, Esq.  
Attorney for Plaintiff  
DIEGO B. FERNANDEZ  
376 Route 202  
Somers, NY 10589  
(914) 277-2255

Clerk of the Court  
New York State Supreme Court, Orange County  
285 Main Street  
Goshen, NY 10924

**Index of Documents Filed in State Court Action**

- A. Plaintiff's Summons and Complaint, Supreme Court Orange County, State of New York, Index No. EF001171-2016.
- B. Affirmation/Affidavit of Service, March 18, 2016.

# **Exhibit A**



**NYSCEF - Orange County Supreme Court**

**Confirmation Notice**

This is an automated response for Supreme Court / Court of Claims cases. The NYSCEF site has received your electronically filed document(s) for:

**Diego B Fernandez - v. - Philadelphia Indemnity Insurance Co**

**EF001171-2016**

**Documents Received on 02/22/2016 10:52 AM**

<b>Doc #</b>	<b>Document Type</b>	<b>Motion #</b>
1	SUMMONS + COMPLAINT Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	

**Filing User**

Name: **GEORGE J CALCAGNINI**  
Phone #: **914-277-2255** E-mail Address: **gcalcagnin@aol.com**  
Fax #: **914-277-2299** Work Address: **376 Route 202  
Somers, NY 10589**

**E-mail Notifications**

An e-mail notification regarding this filing has been sent to the following address(es) on 02/22/2016 10:52 AM:  
**CALCAGNINI, GEORGE J - gcalcagnin@aol.com**

**NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.**

---

Annie Rabbitt, County Clerk

Phone: (845) 291-2690 Fax: 845-291-2691 (fax) Website: <http://www.orangecountygov.com/content/124/861/>

NYSCEF Resource Center - [Efile@nycourts.gov](mailto:Efile@nycourts.gov)

Phone: (646) 386-3033 Fax: (212) 401-9146 Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

FILED: ORANGE COUNTY CLERK 02/22/2016 10:52 AM  
NYSCEF DOC. NO. 1.

INDEX NO. EF001171-2016  
RECEIVED NYSCEF: 02/22/2016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

DIEGO B. FERNANDEZ,

Plaintiff,

-against-

PHILADELPHIA INDEMNITY  
INSURANCE COMPANY,

Defendant.

To the above named Defendant

Index No. *EF001171-2016*

Date purchased

*2/22/16*

Plaintiffs designates

Orange  
County as the place of  
trial.

The basis of the venue is  
Plaintiff's residence

*Summons*

*with Notice*

Plaintiffs resides at  
1594 Route 9W  
Highland Falls, NY  
County of Orange

*You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, February 22, 2016

  
GEORGE J. CALCAGNINI  
Attorney for Plaintiff  
Office and Post Office Address  
376 Route 202  
Somers, NY 10589  
(914) 277-2255

**Notice:** The nature of this action is to  
recover on an automobile theft insurance  
policy issued by defendant.

The relief sought is an injunction and a money judgment in the sum of \$164,900 with interest thereon from July 1, 2014, together with the costs and disbursements of this action.

Upon your failure to appear, judgment will be taken against you by default for a money judgment the sum of \$164,900 with interest from July 1, 2014, together with the costs and disbursements of this action.

Defendant's address:

Philadelphia Indemnity Insurance Company  
585 Stewart Avenue  
Suite 500  
Garden City, NY 11530

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

---

DIEGO B. FERNANDEZ,

Plaintiff,

**COMPLAINT**

-against-

Index No.

PHILADELPHIA INDEMNITY  
INSURANCE COMPANY,

Defendant.

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The plaintiff above named, by his attorney, GEORGE J. CALCAGNINI, ESQ.,  
complaining of the defendant, alleges as follows:

1. The plaintiff is a resident of the State of New York and County of Orange.
2. Upon information and belief, at all times hereinafter mentioned, the defendant,  
PHILADELPHIA INDEMNITY INSURANCE COMPANY, was and still is a corporation organized  
and existing under and by virtue of the laws of the State of Pennsylvania, and at all time  
hereinafter mentioned was engaged in business in the State of New York as an insurance  
company, insuring against certain risks, among them being to pay for loss of automobiles caused  
by theft or larceny.
3. That on or about November 20, 2013, the defendant issued and delivered to the  
plaintiff, its automobile insurance policy of insurance, the policy being Policy No. GD20063864-  
004 and in printed form as drawn and prepared by the defendant and designated therein as an  
Agreed Value Collector Vehicle Policy insuring against loss caused by the theft of the plaintiff's  
vehicle referred to in the said policy as a 1962 Chevrolet Impala (VIV 21847S315445), among  
other vehicles.

4. That in and by that policy, the defendant, in consideration of the stipulations in the policy named and the premium duly paid to the defendant by the plaintiff, did insure the plaintiff from November 20, 2013 to November 20, 2014, to an amount not exceeding the \$125,000 agreed value of the said 1962 Chevrolet Impala automobile and its equipment against the hazard of loss by theft or larceny.

5. Prior to issuing an amendment of the said insurance policy to the plaintiff, the defendant did have the plaintiff's 1962 Chevrolet Impala automobile inspected by an expert in the valuation of such automobiles and did reach an agreement with the plaintiff that the defendant would insure the vehicle for an agreed value of \$165,000 even though the fair market value of the vehicle was well in excess of \$165,000.

6. Thereupon, the defendant issued an amendment of the said Agreed Value Collector Vehicle Policy raising the agreed value of the plaintiff's 1962 Chevrolet Impala automobile to \$165,000, which amount the defendant promised to pay to the plaintiff, less a \$100 deductible, in the event that the said vehicle was stolen.

7. That at the time of the issuance and delivery of the policy and the amendment thereof and continuously from then to the time of the hereinafter mentioned theft and loss of the automobile and its equipment, the plaintiff was the owner of the 1962 Chevrolet Impala automobile and its equipment, all of which was well known to the defendant at the time of its issuance of the policy and amendment thereof, and that the policy was the only contract insuring the plaintiff against hazard by theft or larceny on the said automobile and its equipment which the plaintiff had at the time of the issuance of the policy or which he thereafter made or procured thereon and that the plaintiff at no time during the time of the policy had any similar insurance.

8. That on or about July 1, 2014 the plaintiff discovered that the said 1962 Chevrolet Impala automobile had been stolen from a locked garage at his residence located at 1594 Route 9W, Highland Falls, New York, by some unknown third person.

9. The plaintiff promptly notified the police of the theft, but the vehicle has never been recovered.

10. Thereafter, the plaintiff notified the defendant of the theft of the vehicle and filed his sworn proof of loss on the form as required by the defendant and plaintiff has otherwise complied with all the terms and conditions of the policy on his part to be performed in connection with his claim for payment of the agreed value of the vehicle pursuant to the terms of the insurance policy issued by the defendant, as amended.

11. The plaintiff did fully cooperate in the defendant's investigation of the claims and did provide the defendant will all information reasonably requested by the defendant.

12. Despite the foregoing, the defendant did breach the contractual obligations imposed on the defendant under policy of insurance, as amended, issued by the defendant to the plaintiff in that the defendant has failed and refused to pay the plaintiff the \$165,000 agreed value of the said 1962 Chevrolet Impala automobile, less the \$100 deductible.

13. The plaintiff has performed all obligations on his part to be performed pursuant to the contract of insurance, as amended, with the defendant.

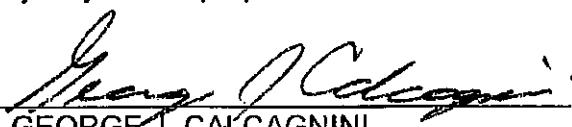
14. The defendant has failed and refused to pay the plaintiff the \$165,000 agreed value of his 1962 Chevrolet Impala automobile, less the \$100 deductible.

15. Upon information and belief on July 1, 2014, that the fair, reasonable, and actual cash value of the 1962 Chevrolet Impala automobile was and is far in excess of the \$165,000 agreed value of the vehicle.

16. By virtue of the foregoing, the plaintiff has been damaged in the sum of \$164,900

WHEREFORE, plaintiff demands judgment against the defendant in the sum of \$164,900 with interest thereon from July 1, 2014 together with the costs and disbursements of this action and for such other and further relief as may be just and proper.

Dated: February 22, 2016

  
GEORGE J. CALCAGNINI  
Attorney for Plaintiff  
Office & Post Office Address  
376 Route 202  
Somers, New York 10589  
(914) 277-2255

# **Exhibit B**



**NYSCEF - Orange County Supreme Court  
Confirmation Notice**

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This is an automated response for Supreme Court / Court of Claims cases. The NYSCEF site has received your electronically filed document(s) for:

**Diego B Fernandez - v. - Philadelphia Indemnity Insurance Co**

**EF001171-2016**

**Documents Received on 03/27/2016 09:59 AM**

<b>Doc #</b>	<b>Document Type</b>	<b>Motion #</b>
2	AFFIRMATION/AFFIDAVIT OF SERVICE	
	Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	

**Filing User**

Name: **GEORGE J CALCAGNINI**  
Phone #: **914-277-2255** E-mail Address: **gcalcagnin@aol.com**  
Fax #: **914-277-2299** Work Address: **376 Route 202  
Somers, NY 10589**

**E-mail Notifications**

An e-mail notification regarding this filing has been sent to the following address(es) on 03/27/2016 09:59 AM:

**CALCAGNINI, GEORGE J - gcalcagnin@aol.com**

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**NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.**

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**Annie Rabbitt, County Clerk**  
Phone: (845) 291-2690 Fax: 845-291-2691 (fax) Website: <http://www.orangecountygov.com/content/124/861/>

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**NYSCEF Resource Center - EFile@nycourts.gov**  
Phone: (646) 386-3033 Fax:( 212) 401-9146 Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

STATE OF NEW YORK  
COURT: SUPREME COURT ORANGE COUNTY

Plaintiff(s)/Petitioner(s) DIEGO B. FERNANDEZ

Defendant(s)/Respondent(s) Vs.  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

STATE OF PENNSYLVANIA

SS

COUNTY OF: BUCKS

The undersigned deponent, being duly sworn deposes and say that said deponent is not a party to this action, is over 18 years of age and resides in the State of PENNSYLVANIA. Deponent served the within process as follows:

Process Served:

NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING, SUMMONS AND COMPLAINTParty Served: PHILADELPHIA INDEMNITY INSURANCE COMPANYAt Location: ONE BALA PLAZA, STE. 400 Three Bala Plaza, Suite 400BALA CYNWYD, PA 19004Date of Service 3/18/16 Time of service 4:32pm C heck boxes that apply to this service:

- #1, INDIVIDUAL By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.
- #2, CORPORATION By delivering to and leaving with Nora Howard and that deponent knew the person so served to be the Paralegal of the corporation and authorized to accept service..
- #3, SUITABLE AGE PERSON By delivering to and leaving with \_\_\_\_\_ a person of suitable age and discretion. Said premises is recipient's [ ] actual place of business [ ] dwelling house(usual place of abode) within the state.
- #4, AFFIXING TO DOOR By affixing a true copy of each to the door of said premises, which is recipient's [ ] actual place of business [ ] dwelling house(usual place of abode) within the state.
- #5, MAILING COPY On \_\_\_\_\_ deponent completed service under the last two sections by depositing a copy of the \_\_\_\_\_ to the above address in a First Class postpaid properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of \_\_\_\_\_. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, having called thereat on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_  
 on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_  
 on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_  
 on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

- #6, NON-SERVICE After due search, careful inquiry and diligent attempts, I have been unable to effect process upon the person/entity being served because of the following: [ ] Unknown Address [ ] Evading [ ] Moved left no forwarding [ ] Address does not exist [ ] Other \_\_\_\_\_

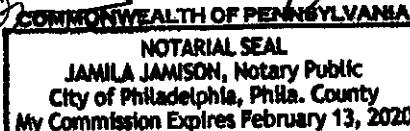
- #7, DESCRIPTION A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:  
 Sex: F Color of Skin: white Color of Hair: brown Age: 20s Height: 5' 4"  
 Weight: 115 Other Features: \_\_\_\_\_

- #8, WITNESS FEES \$ \_\_\_\_\_ the authorizing traveling expenses and one day's witness fee was paid(tendered) to the recipient.

- #9, MILITARY SERVICE Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed \_\_\_\_\_ was not.

Sworn to before me on 3/22/16

James Robinson



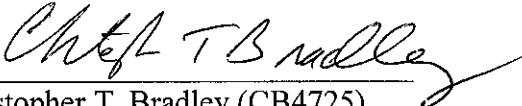
**Certification**

Defendant, PHILADELPHIA INDEMNITY INSURANCE COMPANY, by and through their attorney, Christopher T. Bradley, of the firm MARSHALL CONWAY & BRADLEY, P.C. hereby declare that they have provided all other parties in the action, including the New York State Supreme Court, Orange County, with the notice of removal and attachments being filed with this Court.

Dated:           New York, New York  
                 April 5, 2016

Respectfully Submitted,

By:

  
Christopher T. Bradley (CB4725)  
MARSHALL CONWAY &  
BRADLEY, P.C.  
Attorneys for Defendant/Removing Party  
PHILADELPHIA INDEMNITY  
INSURANCE COMPANY  
45 Broadway, Suite 740  
New York, New York 10006  
(212) 619-4444  
File No.: 36-8931

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
ss.:  
COUNTY OF NEW YORK )

DESIRE COLLADO, being duly sworn, deposes and says:

That deponent is over the age of 18 years, is not a party to this action and resides in NEW YORK COUNTY, NEW YORK.

That on **April 5, 2016**, deponent served the within **NOTICE OF REMOVAL** on:

George J. Calcagnini, Esq.  
Attorney for Plaintiff  
DIEGO B. FERNANDEZ  
376 Route 202  
Somers, NY 10589

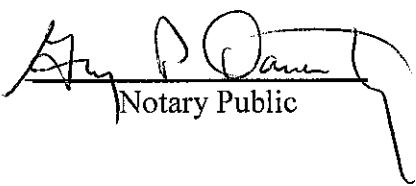
Clerk of the Court  
New York State Supreme Court, Orange County  
285 Main Street  
Goshen, NY 10924

the attorneys in the within action at the addresses indicated above; the addresses designated by said attorneys for that purpose, via ECF *and* by depositing true copies of same enclosed in postpaid properly addressed wrappers, in an official depository under the exclusive care and custody of the U.S. Post Office Department within the State of New York.



DESIRE COLLADO

Sworn to before me this  
5th day of April, 2016



GUY P. DAUERTY  
Notary Public, State of New York  
No. 01DA4934850  
Qualified in New York County  
Commission Expires August 9, 2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

DIEGO B. FERNANDEZ,

Plaintiff,

- against -

PHILADELPHIA INDEMNITY INSURANCE  
COMPANY,

Defendant.

-----X

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**CIVIL COVER SHEET and NOTICE OF REMOVAL**

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Christopher T. Bradley (CB4725)  
MARSHALL CONWAY & BRADLEY, P.C.  
Attorneys for Defendant  
45 Broadway – Suite 740  
New York, New York 10006  
(212) 619-4444  
File No.: 36-8931